IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

CRL.A.No. 393 of 2003()

SC.7/2000 of ADDL.SESSIONS COURT (ADHOC-I), KASARAGOD

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APPELLANT: ACCUSED

SATHEESAN, S/O.KUNHIKANNAN,
KONNAKKAD, MALOM VILLAGE.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.BINDU SREEKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No. 393/2003

Dated this 17th day of September, 2007

JUDGMENT

The appellant is the accused who stands convicted for the offence punishable under Section 55(a) of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months.

2. The prosecution case is that on 26.12.1998 at 3.30 p.m, the accuses was found in possession of one litre of illicit arrack in a plastic container in Malom town.

3. The evidence adduced in the matter consisted of the testimony of PWs1 to 5, Exts.P1 to P5 and Mos1 to 3. Of the prosecution witnesses examined, PW2, the alleged occurrence witness, did not support the prosecution at all. PW1 is the ASI who allegedly detected the offence. According to him, he reached the spot on information received and at about 15 metres away on sighting the police, the accused ran away leaving the container. They attempted to apprehend the accused, but

they could not succeed. PW4, the investigating Officer, the Sub Inspector of police, has stated that he is seeing the accused for the first time. PW1 has also not seen the accused after the date of the incident. He has identified in the Court for the first time, ie, on 7.2.2003, after four years of the alleged incident. It is stated that he was not previously acquainted with the accused.

4. The main contention of the counsel for the appellant is that there is absolutely no evidence as to the identity of the accused. It is also pointed out that when MO1 the plastic container was shown at the time of trial, PW1 has admitted that there is no liquor at all in the container.

5. As pointed out by the counsel for the appellant PW2, who is the defendant witness, was not subjected to any detailed cross examination. There is nothing to show that he has stated to the police that he has identified the accused as a person who is involved in the offence. I find that the prosecution evidence as to the identity of the contraband is too shabby in nature. I

find that the appellant is entitled for acquittal. Prosecution has failed to prove the beyond reasonable doubt that it is the accused who has committed the alleged offence. In the circumstances the finding of the Court below is set aside and the appellant/accused is acquitted.

The appeal is disposed of accordingly.

K.R.UDAYABHANU
JUDGE

mrcs